

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

Request to waive the 300-student minimum enrollment for a new school required by 702 KAR 1:001

Applicable Statute or Regulation:

702 KAR 1:001, The Kentucky School Facilities Planning Manual
KRS 156.160(2)(a), Waiver procedure for Kentucky Board of Education (KBE) regulations

Action Question:

Should the Kentucky Board of Education (KBE) approve the Graves County Board of Education's request to waive the requirement for a 300-student minimum enrollment for a new school to be constructed at Fancy Farm?

History/Background:

Existing Policy. In 702 KAR 1:001, The Kentucky School Facilities Planning Manual, the section titled *SFCC FUNDING CRITERIA - NEW BUILDING OR MAJOR RENOVATION* (attached) states: "For a new facility to be constructed or an existing facility to be renovated, it shall have a minimum of the following number of students in order to receive full funding: Elementary - 300 Students. . ."

1. The 300-student minimum established in administrative regulation was based on national research for quality of education and equitable cost of delivery of services and supported by the study prepared for the Kentucky Department of Education (KDE) by Lawrence O. Picus and Associates, February 2003 entitled, "*A State of the Art Approach to School Finance Adequacy in Kentucky*," and the recommendations of the Facilities Task Force (per HB 380).
2. The regulatory requirement and foundation for the regulation (702 KAR 1:001) was acknowledged and used as precedent criterion by the General Assembly for Urgent Needs school construction funding in HB 269 and 267. The funding created an incentive to consolidate (a net) 23 schools. (Only one of the districts has yet to initiate a project.)
3. For 14 years the Kentucky Department of Education (KDE) has not approved a new school to be constructed or established a project facility plan for less than 300 students.
4. More than 100 schools have been consolidated as a result of new construction in 45

districts by local boards of education using best practice guidelines over the past 10 years.

5. Districts that try to avoid this best practice business model often fall into financial difficulty with operations because of a recurring high cost of delivery of services.

KRS 156.160(2)(a) says “KBE may approve a request for waiver of KBE regulations upon the request of a local board of education or school council through the local superintendent. The Kentucky Board of Education may waive one of its regulations when the school district has demonstrated circumstances that may include, but are not limited to, the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.”

The Kentucky Board of Education recently received a letter, dated January 22, 2007, (attached) from the Graves County Board of Education requesting that the KBE waive 702 KAR 1:001 in order for Graves County to utilize state funds from the Urgent Needs Fund to build a new Fancy Farm Elementary School. The letter cites circumstances that are characterized as unique to support the waiver. Representative Fred Nesler also sent a letter to the KBE (attached), dated January 23, in support of the waiver.

The following narrative provides a history of this Graves County issue:

- 9/27/06 - The District Facilities Plan for Graves County (currently underway) was reviewed by KDE. The Plan called for construction of one new 300-student school at Fancy Farm and one new 300-student school at Lowes that is six miles away. Fancy Farm has an enrollment of only 200 students and Lowes is just below 300 students. The Plan was returned to the Local Planning Committee (LPC) for its reconsideration noting that the regulation does not support the construction of two schools, but would support the construction of one school that would combine both schools. At this time, KDE has not received confirmation of an LPC vote on this review.
- 1/12/07 - The School Facilities Construction Commission (SFCC) Urgent Needs Advisory Committee, in its January 12 letter, made “. . . an official Urgent Need Offer of Assistance to the Graves County Schools Board of Education. Acceptance of this Offer of Assistance commits your school district to adhere to the Statutes and Regulations governing the SFCC as well as the conditions stated in this letter and in the attached guidelines. This Offer of Assistance is in the amount of \$5,000,000 in bonding to the Graves County School District in order to address problems with regard to accessibility and life safety issues at Fancy Farm Elementary School.” (January 12 letter is attached.)

- 1/11/07 - Responding to questions posed in a telephone conversation with Brady Link, Graves County Schools Superintendent, KDE issued a letter answering the following question:

Question: In the offer there is language that the money to Graves County "must be used in the most efficient manner" or some similar language. Does that mean that the money can only be used if Fancy Farm and Lowes are combined as we noted in KDE's review of the District Facilities Plan (DFP) or can they simply build a new school at Fancy Farm?

KDE Response: The monies allowed are to be used for a new facility that is in alignment with the guidelines of the regulation, which means to construct a school that combines Fancy Farm and Lowes to meet best practice enrollment requirements. If the Graves County Board of Education wants to pursue a new facility for Fancy Farm students only and use state funds, that would be prevented by state regulation 702 KAR 1:001, unless the local board sought and successfully obtained from the Kentucky Board of Education a waiver of the regulation provision.

The district has currently about \$9,000,000 in bonding capacity (including the \$5 million SFCC offer). There are two basic scenarios regarding the solution to the Fancy Farm Elementary issue.

Scenario 1 - Build one school to replace both Lowes Elementary and Fancy Farm Elementary, which can be accomplished with the current \$9,000,000 capacity. This scenario would generate about \$400,000 recurring operational savings.

Scenario 2 - Build two schools, one school for a 200-student capacity, the other school for a 300-student capacity, for a total cost of around \$13,300,000. This scenario generates no operational savings but maintains a community school in both locations. Scenario 2 requires additional resources to complete the needs at Lowes Elementary and would be supported by approval of this waiver request.

Other major facilities' needs include \$400,000 for a roof at Farmington Elementary and \$4,000,000 for an HVAC project at Graves County High School.

Policy Issues and Options:

The Board has the following options regarding this waiver request:

1. Approve a waiver of the 300-student minimum.
2. Direct the district to complete its local planning effort, including conducting public forums to present full disclosure of the fiscal impact of proposed options.
3. Deny the waiver request.

Recommendation and Rationale:

Although there are compelling financial reasons to do otherwise, the Commissioner of Education reluctantly recommends approval of the waiver on the following grounds of good cause:

- The decision to close and consolidate schools is the sole responsibility of the local board of education. (KRS 160.220, General powers of local boards of education)
The Graves County Board currently is not willing to pursue this option.
- A special \$5,000,000 SFCC appropriation has been made that may be used for this purpose. Subject to a waiver being provided by KBE, the SFCC offer (attached) provides a unique reason for consideration. This would limit concern for future precedent, negatively affecting accepted best practice.

If the KBE decides to grant the waiver request, it is recommended that the decision letter to the district include the following provisions:

- The district would hold public forums and community meetings to disclose all financial information relative to scenarios to utilize the Urgent Needs offer and implications for operational expenses.
- The Local Planning Committee would be allowed to finish its planning procedure.
- Graves County would reconsider the history and education research on this issue in a statewide context, and study the efficiencies and educational quality of one new school constructed to replace both Fancy Farm and Lowes Elementary.
(Scenario 1 on page 3 of this staff note)

Impact on Getting to Proficiency:

Safe school facilities are a necessary component for academic success. A school's physical environment has an impact on student achievement, and the health and welfare of students, teachers and staff.

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Recommending Deputy

Interim Commissioner of Education

Date:

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